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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 11.10.2006.

Bhajan Singh .... Appellant.

vs

Vijay Kumar .....Respondent.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Brijeshwar Singh Bhalla,Advocate,for the appellant.
Ved Paul Sood, Special Attorney of
Vijay Kumar respondent in person.

Kiran Anand Lall, J.

Bhajan Singh appellant was defendant in the suit which was filed by Vijay Kumar respondent for recovery of the principal amount of Rs.60,000/- along with interest @ 12% per annum from the date of filing of suit till the date of judgment and decree. He had executed a pronote and a receipt in favour of the respondent in this regard on the same day and time when loan was taken viz. 6.8.1995. The respondent demanded back the loan amount many a times but the appellant failed to return the same, and that led to the filing of the recovery suit.

The case set up by the appellant in the written statement filed before the trial court, was of total denial. According to him, he never borrowed any amount from the respondent nor executed any pronote or receipt in this regard. Suit was alleged to be time-barred, also. It was further pleaded that the pronote and receipt were not properly stamped and there were material alterations and additions also therein.

Trial was held in respect of the following issues:-

1. Whether plaintiff is entitled for recovery of suit amount? OPP

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2. Whether plaintiff is entitled for interest? If so, at what rate ? OPP

3. Whether suit is barred by time ? OPD

4. Whether pronote and receipt are without consideration? OPD

4A. Whether the alleged pronote and receipt is not properly stamped nor stamps are properly cancelled ? OPD

4B. Whether there are material alteration and additions in the alleged pronote and receipt? OPD

5. Relief.

On completion of trial, findings of all the issues went in favour of the respondent and a decree for recovery of Rs.60,000/- as principal amount, with interest @ 12% per annum from the date of filing of the suit till the date of judgment and decree and future interest @ 6% per annum was passed in his favour.

The first appellate court upheld the judgment and decree of the trial court, in entirety, and dismissed the appeal.

After having lost in both the courts, Bhajan Singh defendant came up in second appeal, to this court.

As per the Grounds of Appeal, following two substantial questions of law are involved in this appeal:-

"1. Whether the suit filed by the plaintiff/ respondent is barred by law of limitation?

2. Whether the courts below have simply

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ignored the evidence (Oral & Documentary) ?"

After having heard Mr.Brijeshwar Singh Bhalla, learned counsel for the appellant, and Ved Paul Sood, Special Attorney of the respondent, I do not find that any question of law, what to talk of a substantial one, arises for determination, in this appeal.

A perusal of pronote, Ex.P1, and receipt, Ex.P2, shows that the loan transaction had taken place on 6.8.1995 and these documents were also executed on the same day. As such, the suit which was filed on 6.8.1998 was clearly within limitation. Learned counsel for the appellant also could not point out any piece of evidence which was available on record but was not taken into consideration by the courts below. However, he contended that adverse inference should have been drawn against the respondent-plaintiff for his having not appeared, in person, in the witness-box. Besides, he stated that identity of the person who took loan and executed Exs.P1 and P2 is also doubtful as appellant is son of Nikka Singh, whereas the pronote and receipt have been executed by Bhajan Singh son of Phuman Singh. He also stated that Ex.P2 which is dated 6.8.1995 bears a revenue stamp of Re.1/- whereas stamps of this denomination were not available (at Moga) in the year 1995, and this fact, according to him, indicates that Ex.P2 had been ante-dated. This court, it may be stated, is not required to go into any disputed question of fact in a regular second appeal, and otherwise also, there is no substance in any of these facts. Though the respondent (plaintiff) had not appeared in person, his special attorney who is his father also, had appeared as a witness on his behalf and deposed about the facts of the case. It was pointed out that the respondent could not appear, as he had suffered a

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fracture.

Both the courts, on the basis of evidence appearing on record, have found it, as a fact, that the amount in question was borrowed by the appellant from the respondent and he had executed a pronote (Ex.P1) and receipt (Ex.P2) also, in this regard. Bhajan Singh borrower, i.e. the appellant, had been described as son of Phuman Singh in both these documents. In the written statement filed by him, too, he described himself as son of Phuman Singh. Same was the position in his affidavit dated 12.10.1998 filed in the trial court in support of an application filed for the setting aside of ex-parte proceedings taken against him. It is also material to note that he had not taken up any plea about his parentage in the written statement. In so far as the contention regarding non-availability of revenue stamps of the denomination of Re.1/- in the year 1995, is concerned, learned counsel could not refer to any evidence available on file in this regard.

For the reasons stated above, no interference in the concurrent verdict of the courts below is called for, on any ground, whatsoever, in this regular second appeal which shall, resultantly, stand dismissed.

11.10.2006. (Kiran Anand Lall)
vs. Judge.